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Supreme Court, U.S.
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In The

Supreme Court of the United States

CORNELIUS C. SULLIVAN, JR., D.D.S.,

Petitioner,

vs.

THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON DENTAL BRANCH, *ET AL.*,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Texas

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Does the recent holding by the Supreme Court of Texas that sovereign immunity is waived under the state employment discrimination statute (TEX. LABOR CODE §§ 21.001 *et seq.*), effectuate a further waiver of sovereign immunity under the U.S. CONST. amend. XI for the federal employment discrimination statute (29 U.S.C. §§ 621 *et seq.*), thereby making the "deferral state" federal filing deadline of 300 days as held by the Court in *EEOC v. Commercial Office Products Co.*, 486 U.S. 107 (1988), applicable to the Charge filed by the petitioner against the state entity in accordance with the Work-sharing Agreement between the federal employment discrimination agency (the EEOC) and the state employment discrimination agency (the TWC-CRD)?

2) Does the failure of the Texas courts to hold that waiver of sovereign immunity under the Texas employment discrimination statute, which directly cites to the federal anti-discrimination statutes and explicitly states the intent to conform and comply with the federal statutes, is also a waiver of sovereign immunity under the federal anti-discrimination statutes constitute a violation of the guarantees of Equal Protection and Due Process in the U.S. CONST. amend. XIV § 1 for an entire class of Texas state employees, including the petitioner?

PARTIES TO THE PROCEEDING

Petitioner (plaintiff and appellant below):

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Respondents (defendants and appellees below):

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CITATIONS FOR OPINIONS BELOW

The opinion of the Court of Appeals for the First District of Texas (App. 1-11) is not reported as it is a Memorandum Opinion.

The order of the Supreme Court of Texas denying the petition for review (App. 27) and the further order of the Supreme Court of Texas denying the motion for rehearing of the petition for review (App. 14-22) were not reported.

The *per curiam* opinion of the U.S. Court of Appeals for the Fifth Circuit is unpublished under 5TH CIR. R. 47.5.

BASIS FOR JURISDICTION IN THIS COURT

The Court of Appeals for the First District of Texas issued its opinion on December 11, 2008. The Supreme Court of Texas denied the Petition for Review on April 17, 2009 and denied petitioner's Motion for Rehearing of the Petition for Review on June 5, 2009. This Court has jurisdiction under 28 U.S.C. § 1257 to review on writ of certiorari the decisions by the Texas courts.

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The underlying action was brought by the petitioner initially in the U.S. District Court, Southern

District of Texas, under both the AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA), 29 U.S.C. § 621 *et seq.*, and the corresponding state statute, the TEXAS COMMISSION ON HUMAN RIGHTS ACT (TCHRA), TEX. LABOR CODE § 21.001 *et seq.*

In pertinent part, **29 U.S.C. § 623(a)** states:

> (a) Employer practices – It shall be unlawful for an employer –
>
> (1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;
>
> (2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or
>
> (3) to reduce the wage rate of any employee in order to comply with this chapter.

The pertinent sections of the Texas statutes state:

§ **21.051 LAB**. Discrimination by Employer

> An employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age the employer:

(1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or

(2) limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee.

Additional pertinent sections of the Texas employment discrimination statute state:

§ 21.001 LAB. Purposes

The general purposes of this chapter are to:

(1) provide for the execution of the policies of Title VII of the Civil Rights Act of 1964 and its subsequent amendments (42 U.S.C. Section 2000 et seq.);

(2) identify and create an authority that meets the criteria under 42 U.S.C. Section 2000e-5(c) and 29 U.S.C. Section 633;

(3) provide for the execution of the policies embodied in Title I of the Americans with Disabilities Act of 1990 and its subsequent amendments (42 U.S.C. Section 12101 et seq.);

(4) secure for persons in this state, including persons with disabilities, freedom

from discrimination in certain employment transactions, in order to protect their personal dignity;

(5) make available to the state the full productive capacities of persons in this state;

(6) avoid domestic strife and unrest in this state;

(7) preserve the public safety, health, and general welfare; and

(8) promote the interests, rights, and privileges of persons in this state.

§ 21.003 LAB. General Powers and Duties of Commission

The commission may:

(1) promote the creation of local commission on human rights by cooperating or contracting with individuals or state, local, or other agencies, public or private, including agencies of the federal government and of other states; . . .

§ 21.005 LAB. Effect On Other State Or Federal Laws

This chapter does not relieve a government agency or official of the responsibility to ensure nondiscrimination in employment

as required under another provision of the state or federal constitutions or laws.[1]

§ 21.006 LAB. Conformity With Federal Statutes

If a provision of this chapter is held by the Equal Employment Opportunity Commission to disqualify the commission as a deferral agency or for the receipt of federal funds, the commission shall administer this chapter to qualify for deferral status or the receipt of those funds until the legislature meets in its next session and has an opportunity to amend this chapter.

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[1] This section of the TEXAS LABOR CODE was amended, and the statute as of September 1, 2009, will read:

Sec. 21.005. CONSTRUCTION WITH OTHER LAWS.

(a) This chapter does not relieve a government agency or official of the responsibility to ensure nondiscrimination in employment as required under another provision of the state or federal constitutions or laws.

(b) This chapter does not affect the standards for determining eligibility for benefits under Title 5 or under a state or federal disability benefit program.

(c) Nothing in this chapter may be construed as the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of a disability.

Definitions in TCHRA include:

§ 21.002 LAB. Definitions:

(14) "State agency" means:

(C) an institution of higher education as defined by Section 61.003 Education Code.

The definitions in the TEXAS EDUCATION CODE include, with emphasis added:

§ 61.003 EDUC.

(5) "Medical and dental unit" means The University of Texas Medical Branch at Galveston; The University of Texas Southwestern Medical Center at Dallas; The University of Texas Medical School at San Antonio; **The University of Texas Dental Branch at Houston**; The University of Texas M.D. Anderson Cancer Center; The University of Texas Graduate School of Biomedical Sciences at Houston; The University of Texas Dental School at San Antonio; The University of Texas Medical School at Houston; the nursing institutions of The University of Texas System; and The University of Texas School of Public Health at Houston; and such other medical or dental schools as may be established by statute or as provided in this chapter.

The questions presented involve the above federal and state statutes juxtaposed with the following sections of the U.S. CONSTITUTION:

U.S. CONST. amend. XI:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. CONST. amend. XIV, § 1:

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; not shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner, Cornelius C. Sullivan, Jr., D.D.S., filed his Charge of Discrimination based on age with both the Houston Division of the federal Equal Employment Opportunity Commission (EEOC) and the Texas Workforce Commission – Civil Rights Division (TWC-CRD) on April 28, 2005. (App. 34-35). The TWC-CRD is referred to as the "FEPA" (Fair Employment Practices Agency) in the Worksharing Agreement. Previous to that filing, petitioner had gone through the

respondents' grievance procedures to appeal his dismissal as a professor from the respondent dental school after more than fourteen years (11-1-89 through 8-31-04) in that position, despite the numerous awards respondents gave petitioner and the fact that petitioner was allocated a salary on the published state budget for the respondent school for the school year from which he was terminated as a professor as noted by the state court of appeals in its opinion. (App. 2). The Charge was processed by the EEOC through its Worksharing Agreement with the TWC-CRD as a *dual* filing, with the state agency declining the investigation which was deferred by it to the EEOC. (App. 34-36; 39-40; 41-42). Respondents filed two responses in the EEOC proceedings. (App. 43; 44-45). Petitioner's salary allocation was subsequently distributed to younger professors, as respondents' second responsive filing with the EEOC evidenced. (App. 44-45). The EEOC sent petitioner a Notice of Rights letter at the conclusion of its investigation. (App. 46-48).

Petitioner filed his Original Complaint in the Southern District of Texas, Houston Division. Respondents filed a pre-answer motion challenging the federal trial court's jurisdiction because of sovereign immunity, which was granted and affirmed by the Court of Appeals for the Fifth Circuit, in a *per curiam*,

unpublished opinion noted to be under 5TH CIR. R. 47.5.[2] (App. 14-22). The court of appeals opinion stated:

> As part of its investigation into Sullivan's claims, the EEOC requested certain documents and responses from UTHSC. In response to these requests, UTHSC submitted various documents, including a "position statement" and a list of faculty members. Notably, at no point during the EEOC investigation did UTHSC allege that it was entitled to immunity from Sullivan's claims under the Eleventh Amendment.

(App. 15). Despite this note, the Fifth Circuit based its holding on its failure to find a "clear declaration" by the state:

> . . . of its intent to waive Eleventh Amendment immunity "only where stated 'by the most express language or by such overwhelming implication *from the text* as [will] leave no room for any other reasonable construction.'"

(App. 18) (citing to *Edelman v. Jordan*, 415 U.S. 651, 673 (1974) (emphasis added by the 5th Circuit)). The Fifth Circuit opinion was issued *prior to* the Texas Supreme Court's holding that sovereign immunity was waived under the TCHRA, stated in *Mission Consol. Indep. Sch. Dist. v. Garcia*, 253 S.W.3d 653 (Tex. 2008).

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[2] This opinion, *Sullivan v. University of Texas Health Science Center at Houston*, is available at 217 Fed. App. 391, 2007 WL 519744 (C.A.5 (Tex.)).

The Order of dismissal in the U.S. District Court, Southern District of Texas, was without prejudice. (App. 25-26). Petitioner filed his Original Petition against Respondents on February 26, 2007 in the 80th Judicial District Court of Harris County, Texas based upon age discrimination in employment in violation of state and federal statutes, and also based on violation of his guarantees under the U.S. Constitution and similar provisions in the Texas Constitution. Court's Record at 2. Respondents filed a plea to the jurisdiction, based on sovereign immunity as to the petitioner's federal claims and untimely filing (at 240 days) under the Texas statute; this plea was granted by the state trial court and upheld by the Court of Appeals for the First District of Texas. (App. 12-13). As to petitioner's constitutional claims, the Texas appellate court upheld their dismissal by the trial court. (App. 8-11). Further review of the summary dismissal of petitioner's claims (without a determination on the merits at any juncture), was denied by the Supreme Court of Texas and led to this filing. (App. 27; 28).

REASONS FOR GRANTING CERTIORARI

The Court has previously noted the interplay of the federal and state employment discrimination statute filing procedures in the situation of a "deferral state" which coordinates Charge filings through cooperative efforts outlined in "Worksharing Agreements." *EEOC v. Commercial Office Products Co.*, 486 U.S. 107 (1988). That case involved interpretation of

timely filings in Colorado, whereas this case involves not only the "timely filing" holding in *Commercial Office Products*, but also the factors to be considered regarding sovereign immunity in filings by state employees in accordance with a Worksharing Agreement and full investigation by the federal agency at the request of the state agency, with full knowledge that the Charge is against a state educational unit.

Since most filings in Texas are initiated at the offices of the EEOC under the Worksharing Agreement, that fact, together with the state statutory language directly referencing "federal constitutions [sic] or laws," the implication that sovereign immunity has been waived is clearly stated as to filings by state employees, including the petitioner. The Court should clarify the impact of the Worksharing Agreement on the charges filed by the entire class of state employees that cite to violations of the federal ADEA as the basis of their claims, including the petitioner.

1. THE SUPREME COURT OF TEXAS' DENIAL OF REVIEW OF THE FIRST COURT OF APPEALS' DECISION VITIATED ANTI-DISCRIMINATION RIGHTS OF STATE EMPLOYEES

Respondents contended in their First Amended Plea to the Jurisdiction that "Plaintiff Sullivan failed to plead any waiver of that Eleventh Amendment immunity" with regard to petitioner's claims under the ADEA, 29 U.S.C. §§ 621 *et seq*. CR at 24. Petitioner did plead a waiver of sovereign immunity

in citing to the TCHRA codification at TEX. LABOR CODE §§ 21.001 *et seq.*, because that statute includes a specific waiver of sovereign immunity for age discrimination by state officials and agencies, such as respondents herein, against whom a Charge of discrimination has been filed:

> "This chapter does not relieve a government agency or official of the responsibility to ensure nondiscrimination in employment as required under another provision of the *state or federal constitutions or laws*."

TEX. LABOR CODE § 21.005 (emphasis added). The definitions under TCHRA include:

> (14) "State agency" means:
>
> (D) an institution of higher education as defined by Section 61.003 Education Code.

TEX. LABOR CODE § 21.002(14)(C); *see also,* CR at 35-36. The TEXAS EDUCATION CODE includes the following definition:

> (5) "Medical and dental unit" means The University of Texas Medical Branch at Galveston; The University of Texas Southwestern Medical Center at Dallas; The University of Texas Medical School at San Antonio; *The University of Texas Dental Branch at Houston*; The University of Texas M.D. Anderson Cancer Center; The University of Texas Graduate School of Biomedical Sciences at Houston; The University of Texas Dental School at San Antonio; The

> University of Texas Medical School at Houston; the nursing institutions of The University of Texas System; and The University of Texas School of Public Health at Houston; and such other medical or dental schools as may be established by statute or as provided in this chapter.

TEX. EDUC. CODE § 61.003(5) (emphasis added). The statutory language clearly makes respondents subject to the federal discrimination statutes, and respondent UTHSCHDB is specifically named in the statutes. Therefore, respondents' immunity contention is misplaced and should have been disregarded by the courts below.

It is clear that respondents fall under both the Texas statute and the federal statutes to which it correlates and gives deference, since the statute defines "Employer" as:

> (8) "Employer" means:
>
> (D) a county, municipality, state agency, or state instrumentality, regardless of the number of individuals employed.

TEX. LABOR CODE § 21.002(8)(D); *see also* TEX. LABOR CODE § 21.002(14)(C), quoted *supra*. That the statute recognizes the interdependence of state and federal actions in this area is also clear:

> (a) The commission may:
>
> (1) promote the creation of local commissions on human rights by cooperating or contracting with individuals or

> state, local, or other agencies, public or private, *including agencies of the federal government* and of other states; . . .

TEX. LABOR CODE § 21.003(a)(1) (emphasis added). The statute also tracks the ADEA and other federal anti-discrimination/equal protection statutes in its statement of employer discrimination violations:

> An employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age the employer:
>
> (1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or
>
> (2) limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee.

TEX. LABOR CODE § 21.051. The Fifth Circuit has held that the TCHRA, TEX. LABOR CODE § 21.001 *et seq.*, is substantially equivalent to the ADEA in the case of *McClaren v. Morrison Management Specialists, Inc.*, 420 F.3d 457 (5th Cir. 2005). The clear deference given by the TCHRA to federal authority establishes waiver of sovereign immunity under violations of age discrimination in employment by the respondents.

The state statute language establishes no jurisdictional limitations by residents of the state, against any employer:

> (a) A person claiming to be aggrieved by an unlawful employment practice or the person's agent *may* file a complaint with the commission.

TEX. LABOR CODE § 21.201 (emphasis added). The language of the Texas statute is clearly permissive, not mandatory *nor restrictive*. Therefore, the petitioner could do what he has done here: filed his claims under the federal administrative and judicial proceedings, with no limitations because the respondents are employers within the meaning of *both* statutes.[3] It is notable that the respondents did not cite to any portions of the Texas statute that support their argument of statutory sovereign immunity under the ADEA.

In this case, there has been *actual waiver* by the respondents, because they did *not* present a Motion to Dismiss in the administrative proceedings before the EEOC, a federal administrative authority. The referral or deferral to the TWC-CRD by the EEOC was clearly available to the respondent under the state

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[3] Petitioner respectfully asks the Court to note that the *only* office at which a discrimination Charge may be filed in Houston is the EEOC Office at the Mickey Leland Federal Office Bldg., 6th Floor, at 1919 Smith, Houston, TX 77006.

statute, but respondents did not avail themselves of such referral or deferral.

> Investigation by Commission
>
> (b) If the federal government has referred the complaint to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission, the executive director or the executive director's designee shall promptly investigate the allegations stated in the complaint.

TEX. LABOR CODE § 21.204(b), § 21.154. However, the TWC-CRD deferred to the EEOC, and respondents did not request a deferral or referral back to the TWC-CRD, but instead processed the Charge through the *federal* agency. (App. 34-36; 39-40; 41-42; 43; 44-45). Petitioner was under an obligation to exhaust his administrative remedies before filing suit in court. The respondents were likewise under an obligation to present their sovereign immunity objection before the EEOC. Respondents did not and could not allege ignorance that such federal administrative proceedings were a pre-requisite to further federal proceedings. The respondents' failure to move to dismiss or refer the administrative proceedings brought by the petitioner before the EEOC back to the TWC-CRD, or at a minimum state their sovereign immunity, have waived their rights to dismiss the further proceedings on those same allegations before the trial court for lack of jurisdiction, since they have submitted themselves to the federal jurisdiction under the EEOC *without* any plea to the jurisdiction. (App. 43; 44-45).

The denial of review by the Supreme Court of Texas is at odds with its holding regarding waiver of sovereign immunity under the TCHRA:

> Here, Garcia alleges that the Legislature waived the ISD's immunity in the TCHRA. The TCHRA defines "employer" to include "a county, municipality, state agency, or state instrumentality," TEX. LAB. CODE § 21.002(8)(D), and prohibits employers from engaging in discriminatory practices, *id.* § 21.051. Section 21.254 provides that, within sixty days after an employer receives notice of the right to file a civil action, "the complainant may bring a civil action against the respondent." *Id.* § 21.254. While this Court has not previously addressed the issue, all the courts of appeals that have considered it have concluded that the TCHRA clearly and unambiguously waives immunity, and we agree.

Mission Consol. Indep. Sch. Dist. v. Garcia, 253 S.W.3d 653, 660 (Tex. 2008). If the Supreme Court of Texas has clearly held that the statutory language of TCHRA waives sovereign immunity, it necessarily follows that sovereign immunity is waived also as to the federal statutes cited in TCHRA, further supported by the interaction of the federal and state agencies enforcing those statutes under the Work-sharing Agreement. It states:

> In order to facilitate the assertion of employment rights, the EEOC and the FEPA each designate the other as its agent for the

> purpose of receiving and drafting charges, *including those that are not jurisdictional with the agency that initially receives the charges . . .*

(App. 50) (emphasis added). Petitioner respectfully submits that the above language represents the "clear declaration" required by the Fifth Circuit, but which was not stated by the Supreme Court of Texas until its holding in *Mission Consol. Indep. Sch. Dist.*, decided after the opinion of the Fifth Circuit in petitioner's appeal.

As a further evidence of waiver of sovereign immunity, petitioner cited to the Spending Clause, which authorizes the attachment of such waiver conditions:

> The states (or their authorized agencies) may reject the condition of waiver of *Eleventh Amendment* immunity by rejecting the funds and the conditions; they cannot, however, accept the benefit of the funds and reject the inextricably intertwined condition of waiver by claiming *post hoc* that the delegation of authority to accept the funds did not carry with it the authority to waive immunity.

Miller v. Texas Tech. Univ. Health Science Center, No. 02-10190, Consolidated with Nos. 02-30318, 02-30369 (5th Cir. August 22, 2005) (*en banc*) (waiver of sovereign immunity by receipt of funds under § 504 of the Rehabilitation Act of 1973 (non-discrimination by state agencies based on disability)) citing to *Pace v.*

Bogalusa City School Board, 403 F.3d 272 (5th Cir. 2005) (*en banc*). The Fifth Circuit further cited to Section 2000d-7(a)(1):

> A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 . . . *or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance*.

Miller, at fn 6 (emphasis added). Respondents have not and cannot make any contentions that the University of Texas Health Science Center – Houston Dental Branch, of which they are all a part, does not receive any federal funds that would subject it to the waiver provisions under Section 2000d-7(a)(1), or any such like anti-discrimination statutory provision related to federal funds, since the availability of such funds is statutorily acknowledged: "[t]he board may accept gifts and grants from any source for the benefit of the dental branch." TEX. EDUC. CODE § 73.305. Further, the TCHRA specifically references the TWC-CRD as a recipient of federal funds. TEX. LABOR CODE § 21.006. Therefore, the patent receipt of federal funds by the respondents and the TWC-CRD, standing alone, should represent a waiver of Eleventh Amendment immunity as to petitioner's claims and all such similarly-situated claimants, and the denial of review by the Supreme Court of Texas of the

summary dismissal of such rights should be reviewed by the Court.

2. THE COURT HAS AFFIRMED THE 300-DAY FILING DEADLINE FOR CLAIMS UNDER THE ADEA IN DEFERRAL STATES

As the Court stated the issue:

> . . . Whether a waiver of the 60-day deferral period pursuant to a worksharing agreement constitutes a "termination" of a state or local agency's proceedings will determine not only when the EEOC may initiate its proceeding, but also whether an entire class of charges may be timely filed with the EEOC in the first instance.

Commercial Office Products, 486 U.S. at 113. This was followed in another Texas case which held that:

> The federal act carves an exception for cases in which the person aggrieved has initially instituted proceedings with a state or local fair employment practice (FEPA) agency having the authority to grant or seek relief, such as the TCHR. In that instance, the charge shall be filed with the EEOC within 300 days of the violation. A nominal filing is all that is required. . . . In the *Bernal* case, we determined that "when, pursuant to the worksharing agreement here, the EEOC received an employment discrimination charge as agent for the TCHR, its acceptance of the charge satisfied the nominal-filing requirement for instituting proceedings with a state

> agency under Title VII provision, thus extending the statute of limitations to 300 days."

Balli v. El Paso I.S.D., 225 S.W.3d 260, 266 (Tex. App. – El Paso [8th Dist.] 2006, pet. dism'd) (citing to *El Paso City-County Health and Environmental Dist. v. Bernal*, No. 08-00-00349-CV (Tex. App. – El Paso [8th Dist.] 2001, no pet.) (not designated for publication)); *see also,* EEOC Charge Filing Brochure. (App. 61-67). The *Balli* court reversed the trial court's granting of the Defendant's plea to the jurisdiction, under very similar circumstances to this case. In this case, petitioner filed with the EEOC within the 300-day time limit, and his filing was therefore, timely.

The respondents are not strangers to claims such as the petitioner's, under the ADEA and in federal courts. In an ADEA case, post-*Kimel*, the Fifth Circuit held:

> . . . For cases arising in Texas, a complainant must file within 300 days of the last act of discrimination. After timely filing the EEOC charge, the complainant must then wait sixty days before filing a civil action. Under the plain language of § 626(d), "the claimant's independent right to sue arises automatically after the expiration of sixty days after filing the charge with the EEOC." Accordingly, a complainant who timely files the EEOC charge and then observes the

> sixty day waiting period has satisfied the statutory preconditions to filing suit.

Julian v. City of Houston, 314 F.3d 721, 726 (5th Cir. 2002). The respondents' contention that Texas has maintained strict sovereign immunity under ADEA is further eroded by another Fifth Circuit opinion: " . . . [O]ne cannot take legal action in ADEA cases unless one has filed an administrative charge, in cases arising in Texas, within 300 days of the last act of discrimination." *Anson v. Univ. of Tex. Health Science Center*, 962 F.2d 539, 540 (5th Cir. 1992).

It is undisputed that petitioner filed his Charge on April 28, 2005 – 240 days after his termination. (App. 34-35; 37). This was within the instructions represented on the EEOC brochure:

> **Timeliness** A charge must be filed with EEOC within 180 days from the date of the alleged violation, in order to protect the charging party's rights.
>
> This 180-day filing deadline may be extended to 300 days if the charge also is covered by a state or local discrimination law.

(App. 63). The EEOC cannot be understood to misrepresent filing requirements it voluntarily publishes to the general public who enter the agency offices to file Charges. The petitioner filed his Charge within the 300-day deadline, under *both* state and federal statutes as a "dual filing," clearly within the ambit of the EEOC's instructions. Further, when the Notice of

Charge was transmitted to the TWC-CRD pursuant to the Worksharing Agreement, there was a clear deferral to the federal agency for the investigation, without any notations of expiration of filing deadlines or state immunity for the charge against respondents. (App. 39-40; 41-42; 43; 44-45). Therefore, petitioner submits that his filing was effective as against the respondents, and his court filings should not have been summarily dismissed, nor should such dismissals have been affirmed.

3. WAIVER OF SOVEREIGN IMMUNITY UNDER A STATE STATUTE SHOULD RESULT IN WAIVER OF SOVEREIGN IMMUNITY UNDER THE FEDERAL STATUTE TO WHICH THE STATE LAW CITES UNDER EQUAL PROTECTION AND DUE PROCESS GUARANTEES

The Court has held, "under the ADEA, even with its Bona Fide Occupational Qualification (BFOQ) defense, the State's use of age is prima facie unlawful." *Kimel v. Florida Board of Regents*, 528 U.S. 62, 87 (2000) citing to 29 U.S.C. § 623(a)(1); *Western Air Lines, Inc. v. Criswell*, 472 U.S. 400, 422 (1985). Further,

> . . . Measured against the rational basis standard of our equal protection jurisprudence, the ADEA plainly imposes substantially higher burdens on state employers. Thus, although it is true that the existence of the BFOQ defense makes ADEA's prohibition

> of age discrimination less than absolute, the Act's substantive requirement, nevertheless, remains at a level akin to our heightened scrutiny cases under the Equal Protection Clause.

Kimel, 528 U.S. at 87-88. In this case, the courts have ruled that while the petitioner may have had a proper claim had he filed within the 180-day deadline for the TCHRA, *despite* the arguments and authorities that intertwine the TCHRA with the ADEA, including prior decisions by the Court, and *despite* the fact that Texas is a "deferral state" with a Worksharing Agreement in effect between the state and federal agencies, and *despite* the fact that respondents voluntarily filed responsive documentation with the federal agency twice, never alleging a time-bar or sovereign immunity, nevertheless petitioner is precluded from pursuing his claims against respondents in either federal or state court, under either the TCHRA or the ADEA. The result in this case runs counter to the anti-discrimination guarantees in both the TCHRA and the federal statutes to which it directly cites, including the ADEA, which are fundamentally based on basic constitutional principles of Equal Protection:

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; not shall any State deprive any person of life,

> liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1. In this case, both state and federal courts have summarily dismissed petitioner's claims, on grounds that could easily be asserted against similarly-situated state employees, leaving such claimants without protection whatsoever.

Despite the continued assertion by petitioner, respondents have not denied that he was listed as part of the FY 2004-2005 budget, and have referred to this as a "line-item in the budget," accepted by the Texas court of appeals. (App. 2). Respondents relied on Black's Law Dictionary to support their arguments below, but such a budget listing, necessarily presented to the Legislature for approval of funding with identifiable recipient for salaries, namely Sullivan, amounts to a clearly implied and publicly published promise of continued employment. Certainly, the uncontroverted re-assignment of petitioner's salary to other younger professors, without providing a hearing to petitioner, at the time a public employee, constitutes the lack of the "'protection of the individual against arbitrary action' which Mr. Justice Cardozo characterized as the very essence of due process." *Slochower v. Board of Education*, 350 U.S. 551, 559 (1956) citing *Ohio Bell Telephone Co. v. Commission*, 301 U.S. 292, 302 (1937) (university professor could not be terminated without hearing); *see also*, *Connell v. Higginbotham*, 403 U.S. 207, 208 (1971) (firing of

elementary school substitute teacher without hearing violated due process). Under these authorities, petitioner could not be terminated without a due process hearing, which respondents have not alleged or contended they provided, but instead excuse their violation by referring to petitioner's lack of tenure, despite his fifteen years on the faculty. Neither Professor Slochower (eligible, but not identified as "tenured"), nor Ms. Connell were "tenured," yet the Court held that they could not be summarily terminated without a hearing, because their due process rights had been violated by state actors. Such is the case presented herein and, therefore, review should be granted.

As was clearly stated in respondents' Position Statement, filed with the EEOC, the petitioner was terminated with "the budget performance [*sic* problems] and inadequate performance cited as the reasons for non-reappointment," which were "in fact, not separate issues but ultimately tied together." CR at 100. It is clear from respondent's Flaitz's explanatory letter quoted in the Position Statement, that respondents impugned the petitioner's professional reputation in his termination, thus foreclosing his freedom to seek employment at other dental schools. The Court has held:

> . . . Yet certainly where the State attaches "a badge of infamy" to the citizen, due process comes into play. *Wieman v. Updegraff*, 344 U.S. 183, 191. "[T]he right to be heard before being condemned to suffer grievous loss of

> any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society." *Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 168 (Frankfurter, J., concurring).
>
> Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.

Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971) (state action publicly impugning citizen, pursuant to statute, without hearing violated due process). The actions taken by respondents with regard to his termination were an affront to basic constitutional guarantees against unlawful state action, and should be reviewed by the Court to protect other similarly-situated state employees.

4. FAILURE TO GRANT REVIEW WILL IMPAIR THE CONSTITUTIONAL GUARANTEES OF SIMILARLY SITUATED STATE EMPLOYEES INTO THE FUTURE WITHOUT LIMIT

As noted above, the actions taken by the respondents were egregious violations of both state and federal statutory protections against discrimination in employment and also of basic constitutional guarantees of all citizens, including the petitioner. As noted in the Charge document, the respondent UTHSC employs over 500 persons, and in its extended capacity as part of a very significant state

university system with campuses across one of the largest states in the country, the implications of the state actions taken against petitioner are capable of repetition among a very large class of citizens. (App. 34). Therefore, the Court should grant his petition and clarify the rights of such citizens to bring their claims against the responsible state actors, whether in state or federal court and whether under the state or federal statute, or both. If review is denied, not only the petitioner, but all such other state employees who enter the Texas EEOC offices, read the Brochure, and follow the filing instructions provided thereon will be summarily denied judicial redress of their claims of unlawful discrimination.

CONCLUSION

This case clearly shows that under the Court's holding in *Commercial Office Products*, the 300-day limitation should be the deadline for filing a charge of discrimination in a deferral state such as Texas, where the Charge of discrimination was dual-filed. Further, the Supreme Court of Texas aligned itself with the Texas appellate courts in stating that sovereign immunity does not arise in employment discrimination cases against the state. Since the discrimination Charges in Texas are dual-filed, it naturally follows that sovereign immunity has also been waived in actions brought against state employers, in which state employees have alleged violations of not only

state, but also federal law, such as the petitioner has done in this case.

PRAYER

Wherefore, premises considered, petitioner prays that the Court GRANT his petition, issuing a writ of certiorari for the Court's review of this case.

Respectfully submitted,

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[SEAL]

In the
Court of Appeals
For The
First District of Texas

NO. 01-08-00327-CV

CORNELIUS C. SULLIVAN, JR., D.D.S.,
Appellant

V.

THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON DENTAL BRANCH, PETER T. TRIOLO, JR., D.D.S., CATHERINE M. FLAITZ, D.D.S., AND JAMES T. WILLERSON, M.D., Appellees

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On Appeal from the 80th District Court
Harris County, Texas
Trial Court Cause No. 2007-1119

Opinion issued December 11, 2008

MEMORANDUM OPINION

Appellant, Cornelius C. Sullivan, Jr., D.D.S., brings this interlocutory appeal from an order granting the plea to the jurisdiction filed by appellees, the University of Texas Health Science Center at Houston Dental Branch, Peter T. Triolo, Jr., D.D.S.,

Catherine M. Flaitz, D.D.S., and James T. Willerson, M.D. In three issues, Sullivan contends the trial court erred by granting the plea to the jurisdiction and dismissing his (1) claims for age discrimination under the Age Discrimination Employment Act of 1967 (ADEA),[1] (2) his discrimination claims under the Texas Commission on Human Rights Act (TCHRA),[2] and (3) his due process claims under the United States and Texas constitutions.[3] We conclude the trial court did not err by granting the plea to the jurisdiction and dismissing Sullivan's claims. We affirm.

Background

The University of Texas Health Science Center at Houston Dental Branch ("the University") employed Sullivan through a series of term contracts as an associate professor for 15 years, until he was terminated on September 1, 2004. At the time of his termination, the University's budget for fiscal year 2004-2005 listed Sullivan as a salaried associate professor. Triolo, Flaitz, and Willerson held administrative positions with the University at the time of Sullivan's termination.

After his termination, Sullivan filed a complaint with the Equal Employment Opportunity Commission

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[1] 29 U.S.C. §§ 621-634 (LexisNexis 2002 & Supp. 2008).

[2] TEX. LAB. CODE ANN. §§ 21.001-.556 (Vernon 2006).

[3] U.S. CONST. amend. XIV, § 1; TEX. CONST. art. I, § 19.

(EEOC) on April 28, 2005, 240 days after he was terminated. On the form Sullivan filed, he indicated that the complaint was to be dual-filed with both the EEOC and the Texas Commission on Human Rights. The EEOC issued Sullivan a right-to-sue-letter. Sullivan filed suit in federal court, but the court dismissed the suit for lack of jurisdiction. Sullivan then refiled suit against the University, Triolo, Flaitz, and Willerson in state court, asserting causes of action against the University for age discrimination in violation of the TCHRA, violation of the ADEA, and violation of his right to due process under both the United States and Texas constitutions. Sullivan also asserted a cause of action against Triolo, Flaitz, and Willerson for defamation.

The University, Triolo, Flaitz, and Willerson filed a plea to the jurisdiction. The trial court granted the plea to the jurisdiction, dismissing all of Sullivan's claims except for his claim for defamation.

Plea to the Jurisdiction Standard of Review

A plea to the jurisdiction is a dilatory plea that challenges the trial court's subject matter jurisdiction. *Tex. Dep't of Parks & Wildlife v. Miranda,* 133 S.W.3d 217, 225-26 (Tex. 2004). Whether the plaintiff has alleged facts that demonstrate subject-matter jurisdiction is a question of law, which we review de novo. *Id.* at 226. Although we are not to reach the merits of the plaintiff's case, when the plea to the jurisdiction challenges the existence of jurisdictional

facts, we consider the relevant evidence submitted by the parties that is necessary to resolve the jurisdictional issue. *Id.* at 227. This procedure generally mirrors that of a summary judgment under rule of civil procedure 166a(c). *Id.* at 228. The plaintiff has the initial burden to plead facts affirmatively showing the trial court has subject matter jurisdiction. *Id.* at 226. The governmental unit then has the burden to assert that the trial court lacks subject matter jurisdiction and must support that contention with evidence. *Id.* at 228. If it does so, the plaintiff must raise a material fact issue regarding jurisdiction to survive the plea to the jurisdiction. *Id.* If the evidence creates a fact issue concerning jurisdiction, the plea to the jurisdiction should be denied. *Id.* If the evidence is undisputed or fails to raise a fact issue concerning jurisdiction, the trial court rules on the plea to the jurisdiction as a matter of law. *Id.*

Waiver of Sovereign Immunity

In his first issue, Sullivan contends the trial court erred by granting the University's plea to the jurisdiction on the ground that Sullivan did not plead a valid waiver of immunity for his ADEA claims. Sullivan asserts that the TCHRA waives the States' immunity for claims of age discrimination under the ADEA. Sullivan contends that because the TCHRA has been interpreted to be substantially equivalent to the ADEA, "[t]he clear deference given by the TCHRA to federal authority establishes waiver of sovereign immunity under violations of age discrimination in

employment." Sullivan cites no authority that expressly supports his position.

The United States Supreme Court has held the ADEA does not validly waive the states' sovereign immunity to a suit for damages by an individual. *See Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 91, 120 S. Ct. 631, 650 (2000). The ADEA, therefore, does not waive the state's immunity. *See id.* Moreover, nothing in the TCHRA waives the State's immunity for ADEA claims; the TCHRA waives immunity only for TCHRA claims for "unlawful employment practices." *See* TEX. LAB. CODE ANN. §§ 21.002(4), 21.254 (Vernon 2006) (holding section 21.254 waivesing [sic] immunity by authorizing "complainant" to bring action and defining "complainant" as "an individual who brings an action or proceeding *under this chapter*"); *Mission Consol. Indep. Sch. Dist. v. Garcia*, 253 S.W.3d 653, 660 (Tex. 2008). Sullivan does not identify any waiver of the State's immunity from suit for a private cause of action for damages for violations of the ADEA. We hold the trial court did not err by granting the plea to the jurisdiction concerning Sullivan's claims under the ADEA.

We overrule Sullivan's first issue.

Timeliness of Filing

In his second issue, Sullivan contends the trial court erred by granting the University's plea to the jurisdiction because his state law complaint was timely filed.

"Texas law requires that a complaint of unlawful employment practices be filed with the EEOC or the Texas Commission on Human Rights within 180 days after the alleged unlawful employment practice occurred." *Davis v. Autonation USA Corp.*, 226 S.W.3d 487, 491 (Tex. App. – Houston [1st Dist.] 2006, no pet.) (citing *Specialty Retailers, Inc. v. DeMoranville*, 933 S.W.2d 490, 492 (Tex. 1996)); *see* TEX. LAB. CODE ANN. § 21.202 (Vernon 2006) (entitled "Statute of Limitations"). "This time limit is mandatory and jurisdictional." *Davis*, 226 S.W.3d at 491 (citing *Schroeder v. Tex. Iron Works, Inc.*, 813 S.W.2d 483, 486 (Tex. 1991)). "Failure to timely file an administrative complaint deprives Texas trial courts of subject-matter jurisdiction." *Id.* (citing *Czerwinski v. Univ. of Tex. Health Sci. Ctr.*, 116 S.W.3d 119, 122 (Tex. App. – Houston [14th Dist.] 2002, pet. denied); *Vincent v. W. Tex. State Univ.*, 895 S.W.2d 469, 473 (Tex. App. – Amarillo 1995, no writ)).

Here, Sullivan did not file his complaint until April 28, 2005 – 240 days after his termination. Thus, the trial court lacked jurisdiction. *See Davis*, 226 S.W.3d at 492.

Sullivan nevertheless contends that he timely filed his complaint under the ADEA and argues that this should save his state complaint. Several courts have addressed Sullivan's contention and rejected it. *DeMoranville v. Specialty Retailers, Inc.*, 909 S.W.2d 90, 92 (Tex. App. – Houston [14th Dist.] 1995), *rev'd on other grounds by* 933 S.W.2d 490 (Tex. 1996) (noting that, although ADEA time limit for filing can

be extended to 300 days, Texas 180 day limit is "not affected"); *see Pope v. MCI Telecomms. Corp.*, 937 F.2d 258, 264 (5th Cir. 1991) (noting that Texas "was under no obligation to – and did not – provide a statute of limitations that matches that contained within title VII," and therefore Texas's strict 180-day limitations period must be followed for state claims under Texas law); *Klebe v. Univ. of Tex. Sys.*, No. 03-05-00527-CV, 2007 WL 2214344, at *3 (Tex.App. – Austin July 31, 2007, no pet.) (mem. op.) (holding complainant asserting TCHRA claims not entitled to 300-day limit of ADEA, but had to comply with 180-day limit of Texas law). We likewise reject Sullivan's attempt to apply the federal limitations period to his state law claims.

To support this contention, Sullivan cites to *EEOC v. Commercial Office Products Co.*, 486 U.S. 107, 108 S. Ct. 1666 (1988) and *Balli v. El Paso Independent School District*, 225 S.W.3d 260 (Tex. App. – El Paso 2006, pet. granted, judgment vacated w.r.m.). However, neither case addresses whether filing a federal complaint with the EEOC that may be timely under federal law can save a state law complaint that was filed after the 180-day deadline provided by Texas law, which is the issue before us. In *Commercial Office Products*, the Supreme Court addressed the timeliness of filings under federal law, not state law.[4] In *Balli*, the El Paso court of appeals

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[4] The Supreme Court stated the issues as follows:

The primary question presented is whether a state agency's decision to waive its exclusive 60-day period

(Continued on following page)

addressed whether a filing with the EEOC constituted a "nominal" filing with the Commission. Neither opinion addresses whether federal procedures, which include an extension of the 180-day filing deadline to 300 days in certain circumstances, can or should be applied to the filing of a state complaint.

We conclude that the extension of time under the ADEA does not apply to state law claims under the TCHRA. *See Pope,* 937 F.2d at 264; *DeMoranville,* 909 S.W.2d at 92. Accordingly, we hold Sullivan's complaint was untimely and the trial court lacked jurisdiction. *See Davis,* 226 S.W.3d at 491.

We overrule Sullivan's second issue.

Due Process

In his third issue, Sullivan challenges the trial court's granting of the University's plea to the jurisdiction, asserting that he properly pleaded a cause of action and waiver of immunity. Although the

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> for initial processing of a discrimination charge, pursuant to a worksharing agreement with the EEOC, "terminates" the agency's proceedings within the meaning of § 706(c) of Title VII, 78 Stat. 260 . . . , so that the EEOC immediately may deem the charge filed. In addition, we must decide whether a complainant who files a discrimination charge that is untimely under state law is nonetheless entitled to the extended 300-day federal filing period of [statute].

EEOC v. Commercial Office Products Co., 486 U.S. 107, 110, 108 S. Ct. 1666, 1668 (1988).

University, Triolo, Flaitz, and Willerson do not dispute that sovereign immunity is waived for due process claims, they assert the trial court properly ruled it lacked jurisdiction on the ground that Sullivan lacks standing to bring a due process claim because he has no protected property interest in continued employment.

In order to bring a due process claim, the plaintiff must assert a property interest that is protected by the Fourteenth Amendment of the United States Constitution or article I, section 19 of the Texas Constitution. *See Bd. of Regents of State Colls. v. Roth,* 408 U.S. 564, 570-71, 92 S. Ct. 2701, 2705-06 (1972) (noting "due process appl[ies] only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property"); *see also Concerned Cmty. Involved Dev., Inc. v. City of Houston,* 209 S.W.3d 666, 671 (Tex. App. – Houston [14th Dist.] 2006, pet. denied) ("The Due Process Clause is only activated when there is some substantial liberty or property interest which is deserving of procedural protections."). If the plaintiff does not assert a protected property interest, the trial court lacks jurisdiction over the suit. *See Nat'l Collegiate Athletic Ass'n v. Yeo,* 171 S.W.3d 863, 870 (Tex. 2005) (holding Yeo "asserted no interests protected by article I, section 19 of the Texas Constitution" and her claims "must therefore be dismissed"); *Concerned Cmty. Involved Dev., Inc.,* 209 S.W.3d at 672 (holding plaintiff lacked standing to bring due process claims absent protected property

interest); *Stafford Mun. Sch. Dist. v. L.P.,* 64 S.W.3d 559, 564 (Tex. App. – Houston [14th Dist.] 2001, no pet.) (holding trial court lacked jurisdiction over due process claim in absence of "a constitutionally protected property or liberty interest").

"To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Yeo,* 171 S.W.3d at 870 n. 19 (quoting *Roth,* 408 U.S. at 577, 92 S. Ct. at 2709). An employee under a term contract has no vested property interest in the renewal of the contract and the employee cannot show an entitlement to renewal when the employer "merely declined to offer him another year of employment." *Govant v. Houston Cmty. Coll. Sys.,* 72 S.W.3d 69, 76 (Tex. App. – Houston [14th dist.] 2002, no pet.).

In his petition, Sullivan alleged the University violated his right to due process by terminating him because he had a "vested property right" in his employment by virtue of the University including him as a "salaried employee in the [University's] Budget for FY 2004-2005." Sullivan cites no authority to support his position that the University's budget containing his salary for the coming year modified his year-to-year contract employment to "a legitimate claim of entitlement" in employment for the fiscal year 2004-2005. *See Yeo,* 171 S.W.3d at 870 n.19 (quoting *Roth,* 408 U.S. at 577, 92 S. Ct. at 2709). We conclude that Sullivan did not plead facts showing he

had a protected property interest that should be protected by due process. Accordingly, we hold the trial court did not err by granting the plea to the jurisdiction and dismissing Sullivan's due process claims.

We overrule Sullivan's third issue.[5]

Conclusion

We affirm the judgment of the trial court.

Elsa Alcala
Justice

Panel consists of Justices Taft, Keyes, and Alcala.

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[5] In his reply brief and at argument, Sullivan also asserted that he had a protected property interest in his reputation. However, Sullivan did not assert that the University injured his reputation in his pleadings or in his reply to the University's plea to the jurisdiction. He argued this for the first time in his reply brief to this Court. "An issue raised for the first time in a reply brief is ordinarily waived." *N.P. v. Methodist Hosp.*, 190 S.W.3d 217, 225 (Tex. App. – Houston [1st Dist.] 2006, pet. denied). We therefore decline to address Sullivan's contention that he had a protected property interest in his reputation. *See id.*

[SEAL]

Court of Appeals
First District of Texas

JUDGMENT

CORNELIUS C. SULLIVAN, JR. D.D.S., APPELLANT

NO. 01-08-003247-CV V.

THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON DENTAL BRANCH, PETER T. TRIOLO, JR., D.D.S., CATHERINE M. FLAITZ, D.D.S, and JAMES T. WILLERSON, M.D., APPELLEES

Appeal from the 80th District Court of Harris County, Texas (Tr. Ct. No. 2007-11197). Panel consists of Justices Taft, Keyes, and Alcala. Opinion was delivered by Justice Alcala.

The cause heard today by the Court is an appeal from the order signed by the court below on February 1, 2008. After submitting the cause and inspecting the record of the court below, it is the opinion of this Court that there was no reversible error in the order. It is, therefore, **CONSIDERED**, **ADJUDGED**, and **ORDERED** that the order of the court below be, in all things, **affirmed**.

It is further **ORDERED** that appellant, CORNELIUS C. SULLIVAN, JR., D.D.S., pay all costs incurred by reason of this appeal.

It is further **ORDERED** that this decision be certified below for observance.

Judgment rendered by panel consisting of Justices Taft, Keyes, and Alcala.

Judgment rendered December 11, 2008

In The United States Court Of Appeals
For The Fifth Circuit

No. 05-21050

CORNELIUS C. SULLIVAN, D.D.S.,

Plaintiff-Appellant,

v.

UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON DENTAL BRANCH; PETER T. TRIOLO, JR., D.D.S., CATHERINE M. FLAITZ, D.D.S.; JAMES T. WILLERSON, Medical Doctor.

Defendants-Appellees.

Appeal from the United States District Court
For the Southern District of Texas
No. 4:05-CV-03254

(Filed Feb. 13, 2007)

(Filed in TXSD on Apr. 13, 2007)

Before GARWOOD, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

The plaintiff filed an employment discrimination suit against a state agency and individual defendants, and the district court granted the defendants' motion to dismiss pursuant to the Eleventh Amendment. We affirm.

Cornelius Sullivan filed an age discrimination charge with the EEOC after his employer, the University of Texas Health Science Center at Houston Dental Branch (UTHSC), allegedly terminated his employment in violation of federal law. The EEOC later transmitted a copy of the charge to the Civil Rights Division of the Texas Workforce Commission. As part of its investigation into Sullivan's claims, the EEOC requested certain documents and responses from UTHSC. In response to these requests, UTHSC submitted various documents, including a "position statement" and a list of faculty members. Notably, at no point during the EEOC investigation did UTHSC allege that it was entitled to immunity from Sullivan's claims under the Eleventh Amendment. The EEOC subsequently issued a dismissal and notice of rights in which it claimed to be unable to conclude whether UTHSC violated any statutes. Sullivan then filed a complaint in federal district court alleging

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

state law defamation as well as discrimination in violation of the Age Discrimination in Employment Act of 1967 (ADEA). Sullivan named UTHSC and three individual UTHSC administrative officers as defendants. The defendants moved to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), arguing that the Eleventh Amendment barred Sullivan's suit. The court granted the motion and dismissed all claims without explanation. Sullivan appeals.

We review Eleventh Amendment immunity determinations de novo.[1] It is undisputed that UTHSC, as an arm of the state, is entitled to Eleventh Amendment immunity absent Congressional abrogation or voluntary waiver.[2] Sullivan has failed to argue on appeal that the individual defendants are not entitled to immunity, nor has he argued that his state law defamation claims against the individual defendants should not have been dismissed. Accordingly, he has waived these potential arguments and we do not address them.[3]

In *Kimel v. Florida Board of Regents,* the Court held that the ADEA does not abrogate Eleventh

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[1] *United States v. Tex. Tech Univ.*, 171 F.3d 279, 288 (5th Cir. 1999).

[2] *See Mt. Healthy City School Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977).

[3] *See United States v. Thames*, 214 F.3d 608, 612 n.3 (5th Cir. 2000); *see also* FED. R. APP. P. 28(a)(9)(A).

Amendment immunity because the ADEA could not be enacted pursuant to section five of the Fourteenth Amendment.[4] Sullivan therefore argues that the State of Texas, through various actions, has voluntarily waived its Eleventh Amendment immunity from ADEA claims. Sullivan first argues that the defendants waived Eleventh Amendment immunity by participating in the EEOC investigation without raising an immunity defense. According to Sullivan, the defendants submitted themselves to federal jurisdiction under the EEOC and thus were required to raise their Eleventh Amendment immunity in order to avoid waiving the defense. Sullivan cites no authority for this argument, and we find it contrary to our established precedent.

As we recently noted in *Meyers ex rel. Benzing v. Texas*, a State waives Eleventh Amendment immunity "either if (1) the state voluntarily invokes federal court jurisdiction, or (2) the state makes a 'clear declaration' that it intends to submit itself to federal court jurisdiction."[5] The defendants' failure to raise the defense in the EEOC proceedings is not a "voluntary invocation" of federal court jurisdiction.[6]

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[4] 528 U.S. 62, 83-84 (2000).

[5] 410 F.3d 236, 241 (5th Cir. 2005) (citing *Coll. Sav. Bank v. Fl. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 675-76 (1999)).

[6] *See Gunter v. Atl. Coast Line R.R. Co.*, 200 U.S. 273, 286 (1906); *Lapides v. Bd. of Regents of the Univ. Sys. of Ga.*, 535 U.S. 613, 624 (2002); *Meyers*, 410 F.3d at 250.

Likewise, the failure to raise the argument is not a "clear declaration" that the State waived its Eleventh Amendment immunity. Sullivan claims that the defendants, in "voluntarily appear[ing], respond[ing], and actively participat[ing]" in the EEOC investigation, gave a "clear declaration" that they intended to submit to federal court jurisdiction. However, the "clear declaration" that *Meyers* references is some type of *statutory* declaration of the State's intention to be bound. A State makes a clear declaration of its intent to waive Eleventh Amendment immunity "only where stated 'by the most express language or by such overwhelming implication *from the text* as [will] leave no room for any other reasonable construction.'"[7] In this case, the defendants' participation in the EEOC proceedings is in no way related to a statutory declaration of any intention to submit to federal court jurisdiction.

Sullivan also argues that since the defendants failed to request a referral or deferral of Sullivan's complaint from the EEOC to the Texas Workforce Commission, they necessarily "declared" their intention to submit to federal court jurisdiction because they agreed that the EEOC would handle the claims. This argument fails for two reasons. First, it appears to implicate the theory of constructive waiver, under which a party will be deemed to have waived

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[7] *Edelman v. Jordan*, 415 U.S. 651, 673 (1974) (citation omitted) (emphasis added).

immunity through its actions. To the extent that Sullivan is relying on a constructive waiver theory his argument must fail, as the Supreme Court has explicitly rejected the theory in the Eleventh Amendment immunity context.[8]

Second, it fails to distinguish between the EEOC and a federal district court. Sullivan argues that since filing with the EEOC is a prerequisite to filing in the district court,[9] the defendants' participation in the EEOC proceeding is tantamount to a "submi[ssion of] its rights for judicial determination."[10] Sullivan cites no authority for this proposition and otherwise fails to make a compelling argument for it. Furthermore, the EEOC does not retain independent adjudicatory authority. Rather, its authority is limited to "endeavor[ing] to eliminate any such alleged unlawful employment practice by *informal* methods of conference, conciliation, and persuasion."[11] It is only if these informal methods fail that the EEOC can sue in federal court *as a plaintiff*.[12] Thus, there is little reason to equate the EEOC investigation with

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[8] *Coll. Sav. Bank*, 527 U.S. at 683-84.

[9] *See* 29 U.S.C. § 626(d) (2000) ("No civil action may be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission.").

[10] *See Meyers*, 410 F.3d at 244 (citing *Gunter*, 200 U.S. at 284-85).

[11] 42 U.S.C. § 2000e-5(b) (2000) (emphasis added).

[12] 42 U.S.C. § 2000e-5(f)(1) (2000).

proceedings in a district court, and it is incorrect to say that the defendants, by participating in the EEOC investigation, necessarily agreed to submit their rights for *judicial* determination. They certainly did not make a "clear declaration" to that effect.

Sullivan also argues that Texas has statutorily waived Eleventh Amendment immunity from ADEA claims. The standard for determining whether a State has statutorily waived Eleventh Amendment immunity is a strict one.[13] As stated previously, "[t]he Court will give effect to a State's waiver of Eleventh Amendment immunity only where stated by the most express language or by such overwhelming implication from the text as [will] leave no room for any other reasonable construction."[14] Sullivan argues that Texas has specifically waived its right to sovereign immunity from ADEA claims through various provisions in the Texas Labor Code. However, none of the provisions Sullivan cites contain any "express language" that waives Eleventh Amendment immunity from ADEA claims.[15] Nor is there an "overwhelming implication from the text" that Texas has waived Eleventh Amendment immunity. At most, the statutes Sullivan cites imply that Texas has agreed to share jurisdiction over employment discrimination

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[13] *See Coll. Sav. Bank*, 527 U.S. at 675.

[14] *Port Auth. Trans-Hudson v. Feeney*, 495 U.S. 299, 305 (1990) (quotations omitted).

[15] *See* TEX. LABOR CODE ANN. §§ 21.005, 21.201(a), 21.100, 21.204(b), 21.211. (1996 & Supp. 2005).

charges brought before state or federal administrative agencies. Sullivan relies on *Port Authority Trans-Hudson v. Feeney*[16] to show that jurisdictional provisions can waive Eleventh Amendment immunity, but his reliance is misplaced. In *Feeney,* the statutory provisions at issue specifically said that the States "consent to suit."[17] Since none of the provisions Sullivan cites makes any "clear declaration" of Texas's consent to be sued, *Feeney* does not support his claims. Because Sullivan fails to show any "clear declaration" or the existence of any "overwhelming implication," we reject his statutory waiver arguments.

Sullivan next argues Texas waived its Eleventh Amendment immunity from ADEA claims by accepting federal funding. He bases this argument on the alleged "plain language" of 42 U.S.C. § 2000d-7(a)(1), under which "[a] State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C.A. § 794], title IX of the Education Amendments of 1972 [20 U.S.C.A. § 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C.A. § 6101 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.], *or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.*"[18] Sullivan

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[16] 495 U.S. at 299.

[17] *Id.* at 302-03 (1990).

[18] 42 U.S.C. § 2000d-7(a)(1) (2000) (emphasis added).

claims this statute says that a State, by accepting federal funds in whatever form, waives Eleventh Amendment immunity against discrimination suits.

An accurate reading of 42 U.S.C. § 2000d-7(a)(1) invalidates Sullivan's argument. The question is whether the ADEA is a "Federal statute prohibiting discrimination by recipients of Federal financial assistance." Clearly it is not. The ADEA prohibits age discrimination by "employers," not by those who receive federal financial assistance. The fact that many employers receive federal assistance does not mean that the ADEA is a "statute prohibiting discrimination by recipients of Federal financial assistance." Texas's general acceptance of federal funding does not waive its Eleventh Amendment immunity from discrimination suits.

* * *

Congress has not abrogated Eleventh Amendment immunity from ADEA claims, and Texas has not voluntarily waived its immunity. Sullivan's suit is therefore barred by the Eleventh Amendment. We AFFIRM.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-21050

D.C. Docket No. 4:05-CV-3254

CORNELIUS C SULLIVAN, DDS

Plaintiff-Appellant

v.

UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON DENTAL BRANCH; PETER T TRIOLO, JR, DDS, CATHERINE M FLAITZ, DDS; JAMES T WILLERSON, Medical Doctor

Defendants-Appellees

Appeal from the United States District Court
For the Southern District of Texas, Houston

Before GARWOOD, DENNIS, and OWEN, Circuit Judges.

JUDGMENT

(Filed Feb. 13, 2007)

(Filed in TXSD on Apr. 13, 2007)

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.

IT IS FURTHER ORDERED that plaintiff-appellant pay to defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CORNELIUS SULLIVAN *Plaintiff*,	§	
v.	§	
THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON DENTAL BRANCH, PETER T. TRIOLO, JR., CATHERINE M. FLAITZ, and JAMES T. WILLERSON, *Defendants*.	§	CA NO. H-05-3254 Jury Trial Demanded

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

(Filed Nov. 22, 2005)

(Filed in TXSD on Nov. 22, 2005)

CAME ON THIS DAY to be considered Defendants' Motion to Dismiss, and the Court having considered the pleading and the documents on file in this matter is of the opinion that the Defendants' Motion to Dismiss is meritorious.

IT IS FURTHER ORDERED that Defendants' Motion to Dismiss is hereby GRANTED.

IT IS FURTHER ORDERED that all Plaintiff's claims against the Defendants are hereby dismissed without prejudice to the refiling of same.

SIGNED this the 22nd day of November, 2005.

/s/ Vanessa D. Gilmore
VANESSA D. GILMORE
UNITED STATES
DISTRICT JUDGE

[SEAL]

THE SUPREME COURT OF TEXAS

Orders Pronounced April 17, 2009

* * *

ORDERS ON PETITIONS FOR REVIEW

THE FOLLOWING PETITIONS FOR REVIEW ARE DENIED:

* * *

09-0179 CORNELIUS C. SULLIVAN, JR., D.D.S. v. THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON DENTAL BRANCH, PETER T. TRIOLO, JR., D.D.S., CATHERINE M. FLAITZ, D.D.S. AND JAMES T. WILLERSON, M.D.; from Harris County; 1st district (01-08-00327-CV, ___ SW3d ___, 12-11-08)

* * *

[SEAL]

THE SUPREME COURT OF TEXAS

Orders Pronounced June 5, 2009

* * *

ORDERS ON MOTIONS FOR REHEARING

THE MOTIONS FOR REHEARING
OF THE FOLLOWING PETITIONS
FOR REVIEW ARE DENIED:

* * *

09-0179 CORNELIUS C. SULLIVAN, JR., D.D.S. v. THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON DENTAL BRANCH, PETER T. TRIOLO, JR., D.D.S., CATHERINE M. FLAITZ, D.D.S. AND JAMES T. WILLERSON, M.D.; from Harris County; 1st district (01-08-00327-CV, ___ SW3d ___, 12-11-08)

* * *

INFORMATION ON CHARGES OF DISCRIMINATION

EEOC RULES AND REGULATIONS

Section 1601.15 of EEOC's regulations provides that persons or organizations charged with employment discrimination may submit a statement of position or evidence regarding the issues covered by this charge.

EEOC's recordkeeping and reporting requirements are found at Title 29, Code of Federal Regulations (29 CFR): 29 CFR Part 1602 (see particularly Sec. 1602.14 below) for Title VII and the ADA; 29 CFR Part 1620 for the EPA; and 29 CFR Part 1627, for the ADEA. These regulations generally require respondents to preserve payroll and personnel records relevant to a charge of discrimination until disposition of the charge or litigation relating to the charge. (For ADEA charges, this notice is the written requirement described in Part 1627, Sec. 1627.3(b)(3), .4(a)(2) or .5(c), for respondents to preserve records relevant to the charge – the records to be retained, and for how long, are as described in Sec. 1602.14, as set out below). Parts 1602, 1620 and 1627 also prescribe record retention periods – generally, three years for basic payroll records and one year for personnel records. Questions about retention periods and the types of records to be retained should be resolved by referring to the regulations.

Section 1602.14 Preservation of records made or kept. . . . Where a charge . . . has been filed, or an action brought by the Commission or the Attorney General, against an employer under Title VII or the

ADA, the respondent . . . shall preserve all personnel records relevant to the charge or the action until final disposition of the charge or action. The term *personnel records relevant to the charge,* for example, would include personnel or employment records relating to the aggrieved person and to all other aggrieved employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates or the same position as that for which the aggrieved person applied and was rejected. The date of *final disposition of the charge or the action* means the date of expiration of the statutory period within which the aggrieved person may bring [a lawsuit] or, where an action is brought against an employer either by the aggrieved person, the Commission, or the Attorney General, the date on which such litigation is terminated.

Notice of Non-Retaliation Requirements

Section 704(a) of Title VII, Section 4(d) of the ADEA, and Section 503(a) of the ADA provide that it is an unlawful employment practice for an employer to discriminate against present or former employees or job applicants, for an employment agency to discriminate against any individual, or for a union to discriminate against its members or applicants for membership, because they have opposed any practice made an unlawful employment practice by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in

an investigation, proceeding, or hearing under the statutes. The Equal Pay Act contains similar provisions. Additionally, Section 503(b) of the ADA prohibits coercion, intimidation, threats, or interference with anyone because they have exercised or enjoyed, or aided or encouraged others in their exercise or enjoyment, of rights under the Act.

Persons filing charges of discrimination are advised of these Non-Retaliation Requirements and are instructed to notify EEOC if any attempt at retaliation is made. Please note that the Civil Rights Act of 1991 provides substantial additional monetary provisions to remedy instances of retaliation or other discrimination, including, for example, to remedy the emotional harm caused by on-the-job harassment.

Notice Regarding Representation by Attorneys

Although you do not have to be represented by an attorney while we handle this charge, you have a right, and may wish to retain an attorney to represent you. If you do retain an attorney, please give us your attorney's name, address and phone number, and ask your attorney to write us confirming such representation.

[SEAL]

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Houston District Office

Mickey Leland Federal Building
1919 Smith Street, 7th Floor
Houston, TX 77002-8049
(713) 209-3320
TTY (713) 209-3439
FAX (713) 209-3381

CERTIFICATION OF DOCUMENTS

I, Mona F. Read, Acting Deputy Director of the Houston District Office of the Equal Employment Opportunity Commission ("Commission"), certify that:

As Acting Deputy Director, all administrative files in the Houston District Office are under my custody, care and control;

An administrative file was prepared in the regular course of business in the Houston District Office of the Commission pertaining to Charge Number 330-2004-05716, Cornelius Sullivan v. University of Texas Dental Branch;

The documents attached hereto are true and accurate copies from the above noted administrative file. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Mona Read
MONA F. READ
ACTING DEPUTY DIRECTOR

Sworn to and Subscribed before me this 28th day of October, 2005.

/s/ Beatrice Burroughs
NOTARY

[SEAL]	**BEATRICE BURROUGHS** MY COMMISSION EXPIRES May 19, 2008

CHARGE OF DISCRIMINATION	AGENCY	CHARGE NUMBER
This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.	☐ FEPA ☒ EEOC	330-2004-05716

Civil Rights Division, Texas Workforce Division and EEOC

State or local Agency, if any

Name (*Indicate Mr., Ms., Mrs.*)	Home Telephone (*Include Area Code*)
Mr. Cornelius Sullivan	(713)

Street Address	City, State and Zip Code	Date of Birth
	Houston, TX 77080	-40

Named Is The Employer, Labor Organization, Employment Agency, Apprenticeship Committee, State or Local Government Agency Who Discriminated Against Me (*If more than one list below*)

Name	Number of Employees, Members	Telephone (*Include Area Code*)
	500+	

Street Address	City, State and Zip Code	County

Name	Telephone (*Include Area Code*)
University of Texas Health Science Center	(713) 500-3268

Street Address	City, State and Zip Code	County
P. O. Box 20036	Houston, Texas 77225	Harris

Cause of Discrimination Based On (*Check appropriate Boxe(s)*)	Date Discrimination Took Place
☐ Race ☐ Color ☒ Sex ☐ Religion ☒ Age ☐ Retaliation ☐ National Origin ☐ Disability ☐ Other (*Specify*)	*Earliest (ADEA/EPA) Latest (All)* August 2004 August 2004 ☐ Continuing Action

The particulars are (*If additional paper is needed, attach extra sheet(s)*):

I was employed with the University of Texas Health Science Center at Houston Dental Branch since 1989. In July 2004, I was informed that my appointment as an Associate Professor would not be renewed for the upcoming academic year. During my employment with the Dental Branch, I received numerous awards, accolades, and my job performance evaluations were satisfactory or above.

My employment with the Dental Branch ended in August 2004. I was informed that my appointment was not renewed because of budgetary problems and my job performance. My evaluations were the same or higher than my colleagues whose appointments were renewed who were younger and female.

As a result of these events, I have been discriminated against based on my age and sex in violation of Title VII of the Civil Rights Act of 1991. I expressly state that I want this charge filed with both the EEOC and the State or Local Agency.

I want this charge filed with both the EEOC and the State or local Agency, if any, I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. /s/ X CCS	NOTARY – (When necessary for State or Local Requirements) [Illegible] I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
I declare under penalty of perjury that the foregoing is true and correct. /s/ CC Sullivan 04-28-05 Date Charging Party (*Signature*)	SIGNATURE OF COMPLAINANT /s/ X CC Sullivan SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year) 4-28-05 [SEAL]

Charge Number
330-2005-05716
TECHNICAL CORRECTION

Cornelius Sullivan
vs
University of Texas
Health Science Center

Technical Correction. In violation of Title VII of the Civil Rights Act of 1964, and amended and the Age Discrimination in Employment Act of 1967, as amended.

U.S. Equal Employment Opportunity Commission

Ms Arlene Stalber [sic] **Attorney Legal Affairs** **UNIVERSITY OF TEXAS** **Health Science Center** **7000 Fannin** **Houston, TX 77030**	Person Filing Charge **Cornelius Sullivan** THIS PERSON (*check one or both*) ☒ Claims To Be Aggrieved ☐ Is Filing on Behalf of Other(s) EEOC CHARGE NO. **330-2004-05716**

App. 37

NOTICE OF CHARGE OF DISCRIMINATION

(*See the enclosed for additional information*)

This is notice that a charge of employment discrimination has been filed against your organization under:

☐ Title VII of the Civil Rights Act ☐ The Americans with Disabilities Act

☒ The Age Discrimination in Employment Act ☐ The Equal Pay Act

The boxes checked below apply to our handling of this charge:

1. ☒ **EEOC has a free, voluntary and highly successful mediation program that gives the parties to a charge an opportunity to resolve the underlying dispute amicably and quickly, meeting the needs of all affected. It has been determined that this charge is eligible for mediation. Please review the enclosed information about mediation and consider this option.**

- **If you would like to try mediation, please complete the enclosed "Invitation to Mediate" and fax it to ADR Program Assistant, Shirley Almaguer at fax: (713) 209-3317 or call (713) 209-3420 by → 26-MAY-05**
- If you advise us of your intent to try mediation, there is no requirement to submit a position statement or response to the charge at this time. **Most mediations are successful, but if this charge cannot be resolved through mediation, you should submit your statement of position and response to our request for information (boxes 2 and 3 below) within 15 calendar days of the close of your mediation session.**
- **If you elect against trying mediation, please take the action(s) indicated in boxes #2 and #3 below.**

2. ☒ Please provide by **13-JUN-05** **a complete statement of your position on all the issues alleged in the charge**, with copies of supporting documentation. Submit your statement and documentation to the EEOC representative listed below.

3. ☐ Please respond fully by to the **enclosed request for information** and submit your response to the EEOC representative listed below.

4. ☐ No action is required by you at this time.

All communications concerning the charge should include the charge number. 330-2004-05716 Thank you for your cooperation.

Nicholas Alwine, Investigator *EEOC Representative* *Telephone:* **(713) 209-3414**	**Houston District Office** **1919 Smith St, 7th Floor** **Houston, TX 77002**
Enclosure(s): ☐ Copy of Charge	

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

☐ Race ☐ Color ☐ Sex ☐ Religion ☐ National Origin ☒ Age ☐ Disability ☐ Retaliation ☐ Other

See enclosed copy of charge of discrimination

Date	Name/Title of Authorized Official	Signature
May 11, 2005	**Michael C. Fetzer** **Acting District Director**	/s/ [Illegible]

U.S. Equal Employment Opportunity Commission

To: **Civil Rights Division, Texas Workforce Commission**
6330 Highway 290, East
Suite 250
Austin, TX 78723

Date **May 11, 2005**

EEOC Charge No.
330-2004-05716

FEPA Charge No.

CHARGE TRANSMITTAL

SUBJECT:

Cornelius Sullivan *v.* **UNIVERSITY OF TEXAS**
Charging Party *Respondent*

Transmitted herewith is a charge of employment discrimination initially received by the:

☒ EEOC ☐ _____ on **May 06, 2005**
Name of FEPA *Date of Receipt*

☒ Pursuant to the worksharing agreement, this charge is to be initially investigated by the EEOC.

☐ Pursuant to the worksharing agreement, this charge is to be initially investigated by the FEPA.

☐ The worksharing agreement does not determine which agency is to initially investigate the charge.

☐ EEOC requests waiver ☐ FEPA waives

☐ No waiver requested ☐ FEPA will investigate the charge initially

Please complete the bottom portion of this form to acknowledge the receipt of the charge and, where appropriate, to indicate whether the Agency will initially investigate the charge.

Typed Name of EEOC or FEPA Official	Signature/initials
Michael C. Fetzer	[Illegible]

Cornelius Sullivan v. **UNIVERSITY OF TEXAS**
Charging Party *Respondent*

TO WHOM IT MAY CONCERN:

☐ This will acknowledge receipt of the referenced charge and indicate this Agency's intention to initially investigate the charge.

☐ This will acknowledge receipt of the referenced charge and indicate this Agency's intention not to initially investigate the charge.

☐ This will acknowledge receipt of the referenced charge and indicate request a waiver of initial investigation by the receiving agency.

☐ This will acknowledge receipt of the referenced charge and indicate this Agency's intention not to dismiss/close/not docket the charge for the following reasons:

Typed Name of EEOC or FEPA Official	Signature/initials
Robert Gomez, Executive Director	

To: **Houston District Office**
1919 Smith St, 7th Floor
Houston, TX 77002

Date

EEOC Charge No.
330-2004-05716

FEPA Charge No.

E8-ALW

U.S. Equal Employment Opportunity Commission

To: **Civil Rights Division, Texas Workforce Commission**
6330 Highway 290, East
Suite 250
Austin, TX 78723

Date **May 11, 2005**
EEOC Charge No.
330-2004-05716
FEPA Charge No.

RECEIVED
May 17 2005
TWC CRD

CHARGE TRANSMITTAL
SUBJECT:

Cornelius Sullivan *v.* **UNIVERSITY OF TEXAS** [HSC @ Houston]
Charging Party *Respondent*

Transmitted herewith is a charge of employment discrimination initially received by the:

☒ EEOC ☐ _____ on **May 06, 2005**
Name of FEPA *Date of Receipt*

☒ Pursuant to the worksharing agreement, this charge is to be initially investigated by the EEOC.

☐ Pursuant to the worksharing agreement, this charge is to be initially investigated by the FEPA.

☐ The worksharing agreement does not determine which agency is to initially investigate the charge.

☐ EEOC requests waiver ☐ FEPA waives

☐ No waiver requested ☐ FEPA will investigate the charge initially

Please complete the bottom portion of this form to acknowledge the receipt of the charge and, where appropriate, to indicate whether the Agency will initially investigate the charge.

Typed Name of EEOC or FEPA Official	Signature/initials
Michael C. Fetzer	[Illegible]

Cornelius Sullivan v. **UNIVERSITY OF TEXAS**
Charging Party *Respondent*

TO WHOM IT MAY CONCERN:

☐ This will acknowledge receipt of the referenced charge and indicate this Agency's intention to initially investigate the charge.

☒ This will acknowledge receipt of the referenced charge and indicate this Agency's intention not to initially investigate the charge.

☐ This will acknowledge receipt of the referenced charge and indicate request a waiver of initial investigation by the receiving agency.

☐ This will acknowledge receipt of the referenced charge and indicate this Agency's intention to dismiss/close/not docket the charge for the following reasons:

Typed Name of EEOC or FEPA Official	Signature/initials
Robert Gomez, Executive Director	[Illegible]

To: **Houston District Office**
1919 Smith St, 7th Floor
Houston, TX 77002

Date May 20, 2005

EEOC Charge No.
330-2004-05716

FEPA Charge No.

E8-ALW

[LOGO] THE UNIVERSITY *of* TEXAS
HEALTH SCIENCE CENTER AT HOUSTON

ARLENE D. STALLER, J.D.
CHIEF LEGAL & COMPLIANCE OFFICER

OFFICE OF LEGAL AFFAIRS
& INSTITUTIONAL COMPLIANCE

P.O. Box 20036 713 500 3268
Houston, Texas 77225 713 500 3275 *fax*

May 25, 2005

Mr. Nicholas Alwine
Investigator
Equal Employment Opportunity Commission
Houston District Office
1919 Smith Street, 7th Floor
Houston, Texas 77002

RE: EEOC Charge Number 330-2004-05716
Cornelius Sullivan

Dear Mr. Alwine:

I have enclosed a position statement and supporting documentation in response to the above referenced charge of discrimination. If you have any questions or need additional information, please feel free to contact me at (713) 500-3268.

Sincerely,

/s/ Arlene D. Staller
Arlene D. Staller, J.D.

Enclosure

RESPONSE TO EEOC
CHARGE OF DISCRIMINATION

Charging Party:	**Cornelius Sullivan**
Charge Number:	**330-2004-05716**
Respondent:	**The University of Texas Health Science Center at Houston**
Date Submitted:	**May 25, 2005**

[LOGO] THE UNIVERSITY *of* TEXAS
HEALTH SCIENCE CENTER AT HOUSTON

Arlene D. Staller, J.D.
Chief Legal & Compliance Officer

OFFICE OF LEGAL AFFAIRS
& INSTITUTIONAL COMPLIANCE

P.O. Box 20036 713 500 3268
Houston, Texas 77225 713 500 3275 *fax*

June 17, 2005

Mr. Nicholas Alwine
Investigator
Equal Employment Opportunity Commission
Houston District Office
1919 Smith Street, 7th Floor
Houston, Texas 77002

RE: EEOC Charge Number 330-2004-05716
Cornelius Sullivan

Dear Mr. Alwine:

Per you [sic] request, I have enclosed information regarding the current faculty in the Department of Restorative Dentistry and biomaterials at The University of Texas Dental Branch at Houston. Please let me know if you have any questions or need additional information.

Sincerely,

/s/ Arlene D. Staller
Arlene D. Staller, J.D.

Enclosure

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Cornelius Sullivan**
Houston, TX 77080

From: **Houston District Office**
1919 Smith St,
7th Floor
Houston, TX 77002

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR § 1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
330-2004-05716	**Joseph M. de Leon, Enforcement Supervisor**	**(713) 209-3423**

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans with Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.

☐ Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.

☐ While reasonable efforts were made to locate you, we were not able to do so.

☐ You were given 30 days to accept a reasonable settlement offer that affords full relief for the harm you alleged.

☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐ Other (*briefly state*)

– NOTICE OF SUIT RIGHTS –

(*See the additional information attached to this form.*)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to use that we will send you. You may file a lawsuit against the respondent(s) under federal law

based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this Notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

/s/ J M de Leon — 6/30/05

for **Michael C. Fetzer, Acting Director** — (*Date Mailed*)

cc: ENCLOSURE(S)

Arlene D. Staller
Chief Legal & Compliance
UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER
P. O. Box 20036
Houston, TX 77225

Shalanda D. Moore
WILLIE & ASSOCIATES
4151 Southwest Freeway
Suite 490
Houston, TX 77027

WORKSHARING AGREEMENT
BETWEEN
TEXAS WORKFORCE COMMISSION
CIVIL RIGHTS DIVISION
AND
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
FOR FISCAL YEAR 2005

I. INTRODUCTION

A. The Texas Workforce Commission Civil Rights Division, hereinafter referred to as the FEPA, has jurisdiction over allegations of employment discrimination filed against employers of 15 or more employees occurring within the State of Texas based on race, color, religion, sex, national origin, age, and mental or physical disability, pursuant to Texas Commission on Human Rights Act, Texas Labor Code, Chapter 21.

The Equal Employment Opportunity Commission, hereinafter referred to as EEOC, has jurisdiction over allegations of employment discrimination occurring throughout the United States where such charges are based on race, color, religion, sex, or national origin, all pursuant to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000(e)) (hereinafter referred to as Title VII). EEOC has jurisdiction to investigate and determine charges of discrimination based on age (40 or older) under the Age

Discrimination in Employment Act (ADEA) of 1967, as amended (29 U.S.C. § 621 et.seq.), for unequal wages based on sex under the Equal Pay Act of 1963 (29 U.S.C. § 206), and over allegations of employment discrimination based on disability pursuant to Title I of the Americans with Disabilities Act of 1991, (42 U.S.C. § 12101).

B. In recognition of, and to the extent of the common jurisdiction and goals of the two (2) Agencies, and in consideration of the mutual promises and covenants contained herein, the FEPA and the EEOC hereby agree to the terms of this Worksharing Agreement, which is designed to provide individuals with an efficient procedure for obtaining redress for their grievances under appropriate State of Texas or Federal laws.

II. FILING OF CHARGES OF DISCRIMINATION

A. In order to facilitate the assertion of employment rights, the EEOC and the FEPA each designate the other as its agent for the purpose of receiving and drafting charges, including those that are not jurisdictional with the agency that initially receives the charges. EECC's receipt of charges on the FEPA's behalf will automatically initiate the proceedings of both EEOC and the FEPA for the purposes of Section 706(c) and (e)(1) of Title VII. This delegation of authority to receive charges does not include the right of

one Agency to determine the jurisdiction of the other Agency over a charge. Charges can be transferred from one agency to another in accordance with the terms of this agreement or by other mutual agreement.

B. The FEPA shall take all charges alleging a violation of Title VII, ADEA, EPA, or the ADA where both the FEPA and EEOC have mutual jurisdiction, or where EEOC only has jurisdiction, so long as the allegations meet the minimum requirements of those Acts, and for charges specified in Section III. A. 1. below, refer them to the EEOC for initial processing.

C. Each Agency will inform individuals of their rights to file charges directly with the other Agency and or assist any person alleging employment discrimination to draft a charge in a manner which will satisfy the requirements of both agencies to the extent of their common jurisdiction.

Normally, once an agency begins an investigation, it resolves the charge. Charges may be transferred between the EEOC and the Texas Workforce Commission Civil Rights Division within the framework of a mutually agreeable system. Each agency will advise Charging Parities [sic] that charges will be resolved by the agency taking the charge except when the agency taking the charge lacks jurisdiction or when the charge is to be transferred in accordance with Section III

(DIVISION OF INITIAL CHARGE – PROCESSING RESPONSIBILITIES).

D. For charges that are to be dual-filed, each Agency will use EEOC Charge Form 5 (or alternatively, an employment discrimination charge form which within statutory limitations, is acceptable in form and content to EEOC and the FEPA) to draft charges. When a charge is taken based on disability, the nature of the disability shall not be disclosed on the face of the charge. (If applicable state statute or local ordinance requires such disclosures, this sentence may be deleted.)

E. Within ten calendar days of receipt, each Agency agrees that it will notify both the Charging Party and Respondent of the dual-filed nature of each such charge it receives for initial processing and explain the rights and responsibilities of the parties under the applicable Federal, State, or Local statutes.

III. DIVISION OF INITIAL CHARGE PROCESSING RESPONSIBILITIES

In recognition of the statutory authority granted to the FEPA by Section 706(c) and 706(d) of Title VII as amended; and by Title I of the Americans with Disabilities Act, and the transmittal of charges of age discrimination pursuant to the Age Discrimination in Employment Act of 1967, the primary responsibility for resolving dual-filed charges between the FEPA and the EEOC will be divided as follows:

A. EEOC and the FEPA will process all Title VII, ADA, and ADEA charges that they originally receive.

1. For charges originally received by the EEOC and/or to be initially processed by the EEOC, the FEPA waives its right of exclusive jurisdiction to initially process such charges for a period of 60 days for the purpose of allowing the EEOC to proceed immediately with the processing of such charges before the 61st day.

In addition, the EEOC will initially process the following charges:

(a) All Title VII, ADA and concurrent Title VII/ADA charges jurisdictional with the FEPA and *received by the FEPA 180 days or more after the date of violation*;

(b) All disability-based charges which may not be resolved by the FEPA in a manner consistent with the ADA;

(c) All concurrent Title VII/EPA charges;

(d) All charges against the FEPA or its parent organization where such parent organization exercises direct or indirect control over the charge decision making process;

(e) All charges filed by EEOC Commissioners;

(f) Charges also covered by the Immigration Reform and Control Act;

(g) Complaints referred to EEOC by the Department of Justice, Office of Federal Contract Compliance Programs, or Federal fund-granting agencies under 29 CFR § 1640, 1641, and 1691;

(h) Any charge where EEOC is a party to a Conciliation Agreement or a Consent Decree which, upon mutual consultation and agreement, is relevant to the disposition of the charge. The EEOC will notify the FEPA of all Conciliation Agreements and Consent Decrees which have features relevant to the disposition of subsequent charges;

(i) Any charge alleging retaliation for filing a charge with EEOC or for cooperating with EEOC;

(j) All charges against Respondents which are designated for initial processing by the EEOC in a supplementary memorandum to this Agreement;

(k) Charges received by the Texas Workforce Commission Civil Rights Division against the J.P. Morgan and Bank One; and,

(l) All charges against members of the Texas Association of Staffing that EEOC is litigating, charges involving National Enforcement Plan or

Local Enforcement Plan issues, class and impact cases.

2. The FEPA will initially process the following types of charges:

(a) Any charge alleging retaliation for filing a charge with the FEPA or cooperating with the FEPA;

(b) Any charge where the FEPA is a party to a Conciliation Agreement or a Consent Decree which, upon mutual consultation and agreement, is relevant to the disposition of the charge. The FEPA will provide the EEOC with an on-going list of all Conciliation Agreements and Consent Decrees which have features relevant to the disposition of subsequent charges;

(c) All charges which allege more than one basis of discrimination where at least one basis is not covered by the laws administered by EEOC but is covered by the FEPA law, or where EEOC is mandated by federal court decision or by internal administrative EEOC policy to dismiss the charge, but FEPA can process that charge;

(d) All charges against Respondents which are designated for initial processing by FEPA in a supplementary memorandum to this Agreement;

(e) All disability-based charges against Respondents over which EEOC does not have jurisdiction;

(f) Texas Workforce Commission Civil Rights Division will process charges filed against members of Texas association of Staffing not defined in III A(1) above; and,

(g) Each agency will, on a weekly basis, provide a listing of charges received during that period with an individual Form 5 and form 212.

B. Notwithstanding any other provision of the Agreement, the FEPA or the EEOC may request to be granted the right to initially process any charge subject to agreement of the other agency. Such variations shall not be inconsistent with the objectives of this Worksharing Agreement or the Contracting Principles.

C. Each Agency will on a quarterly basis notify the other of all cases in litigation and will notify each other when a new suit is filed. As charges are received by one Agency against a Respondent on the other Agency's litigation list a copy of the new charge will be sent to the other Agency's litigation unit within five (5) working days.

IV. EXCHANGE OF INFORMATION

A. Both the FEPA and EEOC shall make available for inspection and copying to appropriate

officials from the other Agency any information which may assist each Agency in carrying out its responsibilities. Such information shall include, but not necessarily be limited to, investigative files, conciliation agreements, staffing information, case management printouts, charge processing documentation, and any other material and data as may be related to the processing of dual-filed charges or administration of the contract. The Agency accepting information agrees to comply with any confidentiality requirements imposed on the agency providing the information. With respect to all information obtained from EEOC, the FEPA agrees to observe the confidentiality provisions of Title VII, ADEA, and ADA.

B. In order to expedite the resolution of charges or facilitate the working of this Agreement, either Agency may request or permit personnel of the other Agency to accompany or to observe its personnel when processing a charge.

V. RESOLUTION OF CHARGES

A. Both agencies will adhere to the procedures set out in EEOC's State and Local Handbook, including current revisions thereto.

B. For the purpose of according substantial weight to the FEPA final finding and order, the FEPA must submit to the EEOC copies of all documents pertinent to conducting a substantial weight review; the evaluation

will be designed to determine whether the following items have been addressed in a manner sufficient to satisfy EEOC requirements; including, but not limited to:

1. jurisdictional requirements,

2. investigation and resolution of all relevant issues alleging personal harm with appropriate documentation and using proper theory,

3. relief, if appropriate,

4. mechanisms for monitoring and enforcing compliance with all terms of conciliation agreements, orders after public hearing or consent orders to which the FEPA is a party.

C. In order to be eligible for contract credit and/or payment, submissions must meet all the substantive and administrative requirements as stipulated in the Contracting Principles.

D. For the purposes of determining eligibility for contract payment, a final action is defined as the point after which the charging party has no administrative recourse, appeal, or other avenue of redress available under applicable State and Local statutes.

VI. IMPLEMENTATION OF THE WORKSHARING AGREEMENT

A. Each agency will designate a person as liaison official for the other agency to contact concerning the day-to-day implementation for the Agreement. The liaison for the FEPA will be Vickie Covington, Interim Executive Director. The liaison official for the EEOC will be Cecil Warren.

B. The agencies will monitor the allocation of charge-processing responsibilities as set forth in the Agreement. Where it appears that the overall projection appears inappropriate, the appropriate portions of this Agreement will be modified to ensure full utilization of the investigation and resolution capacities of the FEPA and rapid redress for allegations of unlawful discrimination.

C. EEOC will provide original forms to be copied by the FEPA, in accordance with the Regulations and the Compliance Manual to be used by the FEPA in correspondence with Charging Parties and Respondents.

D. If a dispute regarding the implementation or application of this agreement cannot be resolved by the FEPA and District Office Director, the issues will be reduced to writing by both parties and forwarded to the Director of the Office of Field Program Operations for resolution.

E. This Agreement shall operate from the first (1st) day of October 2004 to the thirtieth

(30th) day of September 2005 and may be renewed or modified by mutual consent of the parties.

I have read the foregoing Worksharing Agreement and I accept and agree to the provisions contained therein.

8/26/04	/s/ [Illegible]/for
DATE	Michael C. Fetzer District Director – Equal Employment Opportunity Commission, Dallas District Office
8-24-04	/s/ Larry E. Temple
DATE	Larry E. Temple Executive Director – Texas Workforce Commission

EEOC
U.S. Equal Employment
Opportunity Commission

Filing a Charge of Employment Discrimination

You can call the EEOC
National Contact Center toll free at
1-800-669-4000
or 1-800-669-6820 (TTY)

The Houston office's hours of operation are from:
8:00 am to 4:30 pm Monday through Friday
Walk-ins welcome 8am-10:30am.
Please call our offices for afternoon appointments.

www.eeoc.gov
www.eeotraining.eeoc.gov
www.youth.eeoc.gov

If you have an employment discrimination question or if you wish to file a charge, please call the Houston office at 866-408-8075

Who Can File a Charge of Discrimination?

- Any individual who believes that his or her employment rights have been violated may file a change of discrimination with EEOC.
- In addition, an individual, organization, or agency may file a charge on behalf of another person in order to protect the aggrieved person's identity.

How Is a Charge of Discrimination Filed?

- Although you can begin the process over the phone, a completed charge must be filed by mail or in person at the nearest EEOC office.
- Individuals who need an accommodation in order to file a charge (*e.g.*, sign language interpreter, print materials in an accessible format) should inform the EEOC field offices so appropriate arrangements can be made.

To file a complaint against an agency of the Federal government, you must first contact an EEO Officer with that agency. The Human Resources Department of the agency will be able to assist you in contacting an EEO Officer.

[Graphic Omitted In Printing]

Filing a Charge with the Houston District Office

If you believe you have been discriminated against by an employer, labor union or employment agency when applying for a job or while on the job because of your race, color, sex, religion, national origin, age, or disability, or believe that you have been discriminated against because of opposing a prohibited practice or participating in an equal employment opportunity matter, you may file a charge of discrimination with the U.S. Equal Employment Opportunity Commission (EEOC). All laws enforced by EEOC, (Title VII of the Civil Rights Act (Title VII), Americans with Disabilities Act (ADA), and Age

Discrimination in Employment Act (ADEA), except the Equal Pay Act (EPA), require filing a charge with EEOC before a private lawsuit may be filed in court.

To protect you legal rights, it is always best to contact EEOC promptly when discrimination is suspected. There are strict time limits within which charges must be filed.

Timeliness

A charge must be filed with EEOC within 180 days from the date of the alleged violation, in order to protect the charging party's rights.

This 180-day filing deadline may be extended to 300 days if the charge also is covered by a state or local anti-discrimination law.

These limits do not apply to claims under the Equal Pay Act, because under that Act persons do not have to first file a charge with EEOC in order to have the right to go to court. However, since many EPA claims also raise Title VII sex discrimination issues, it may be advisable to file charges under both laws within the time limits indicated.

Jurisdictional Area

The jurisdictional area represents the state, county or city in which an alleged incident of employment discrimination took place.

The Houston District Office has jurisdiction over the State of Louisiana and the State of Texas Counties of Angelina, Austin, Brazoria, Brazos, Calhoun, Chambers, Colorado, Fayette, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jackson, Jasper, Jefferson, Lavaca, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, Victoria, Walker, Walter, Washington, and Wharton.

Houston District Office Information

An individual has 300 days from the date of alleged harm to file a charge with this office against an employer with 15 or more employees for discrimination based on race, color, national origin, sex, religion, and/or disability in the States of Louisiana and Texas. An individual has 300 days from the date of alleged harm to file a charge with this office against an employer with 20 or more employees for discrimination based on age in the States of Louisiana and Texas.

Charges against employers of less than 15 employees (for race, color, national origin, sex, religion, and/or disability) or less than 20 employees (for age) must be filed with the appropriate state within the time limits prescribed by state law. These time limits are 180 days in the State of Texas. The State of Louisiana does not have not a statute covering employees with less than 15 employees.

To protect your legal rights, it is always best to contact EEOC promptly when discrimination is suspected.

Charge Filing Procedures for the Houston District Office

While the office does not require individuals to make appointments to file a charge in person, it is possible to make an appointment to file a charge. You may wish to schedule an appointment if you are traveling a long distance or have limited time to visit the office. We recommend that you contact the office to verify that EEOC has jurisdiction and determine the best time to visit the office. In an effort to provide better customer service, EEOC staff may conduct either an interview in the EEOC office or a telephone interview. Although less time may be required, please allow at least 1 to 2 hours for an office visit. To avoid delay, please let the office know beforehand if you need special assistance, such as an interpreter, to file a charge.

The Houston District Office can also offer services in Chinese, Spanish and Vietnamese.

Individuals who are interested in filing charges of discrimination are initially screened by an EEOC representative to determine whether your employment experiences are covered by the laws EEOC enforces. The EEOC representative will ask questions about your allegations, about the evidence available to

support the allegations, and about jurisdiction (whether the charge is timely, and the employer, charging party and subject matter are covered under the statutes enforced by EEOC).

Our staff will advise you whether your employment concern is covered by EEOC. If it is not covered, you will be provided with information on where you might receive assistance. If covered by EEOC, you will advised on the procedures for filing a charge of employment discrimination with EEOC.

When filing a charge with EEOC, individuals should be prepared to provide the following information:

- The name, address, and telephone number of the person filing the charge;
- The name, address, and telephone number of the company, employment agency, or union that the charge is filed against, and the number of employees (or union members), if known;
- A short description of the event(s) with supporting documentation (if any) which caused the person filing the charge to believe that his or her rights were violated;
- The date(s) the event(s) took place;
- The names, addresses, and telephone numbers of any witnesses;

- Whether the individual has filed the same or similar charge with a state or local fair employment practice agency; and
- The name, address, and telephone number of a person who always knows where to contact the person wishing to file a charge.

[SEAL]

Equal Employment Opportunity Commission

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Mickey Leland Federal Building
1919 Smith Street, Suites 600 & 700
Houston, TX 77002-8049

Phone: 713-209-3372
TTY: 713-209-3439
Fax: 713-209-3381
E-mail: joe.bontke@eeoc.gov